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No. 91-465

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In The

Supreme Court of the United States

October Term, 1991

ACADEMY LIFE INSURANCE COMPANY,

Petitioner,

v.

GEORGE W. GUILL,

Respondent.

ACADEMY LIFE INSURANCE COMPANY,

Petitioner,

v.

NORRIS O. WHITLEY,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

REPLY BRIEF OF PETITIONER

James Wright Crabtree
7621 Little Avenue, Suite 412
Post Office Box 2586
Charlotte, North Carolina 28226
(704) 541-9988
Counsel of Record

Charles Edward Baker
1730 Main St., Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Counsel for Petitioner

October 23, 1991.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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Respondents, in their opposing brief in this matter, appear to assume that the statement in the opinion of the court below that "[t]he Supreme Court has recently foreclosed Academy's due process claim" represents a conclusion by the Court of Appeals based upon consideration and application of the standards constraining discretion described in *Pacific Mutual Life Ins. Co. v. Haslip,*

499 U.S. ___, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991). However, the language of the opinion does not reflect such consideration or application by the Court of Appeals of the necessary standards. Furthermore, under the thorough analysis in the more recent decision of *Mattison v. Dallas Carrier Corp.*, ___ F.2d ___, 1991 WL 204314 (4th Cir. 1991), discussed in the Supplemental Brief of Petitioner filed herein, the required standards cannot be initially applied in these diversity cases on post-trial or appellate review. They must be considered and applied by the jury under appropriate instructions. Hence under any view of the matter, the decision of the court below should not be permitted to stand.

There is no merit in respondents' contentions regarding the timeliness of petitioner's due process objection. When these cases were tried, there was no decision of this Court establishing or delineating objective and meaningful standards for constraining jury discretion in assessing the amount of punitive damages so as to warrant application of the doctrine of waiv of a known constitutional right. See *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967). Moreover, as this Court stated in *Hormel v. Helvering*, 312 U.S. 552, 557, 61 S.Ct. 719, 721, 85 L.Ed. 1037, 1041 (1941):

> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. . . . "

Unlike *Browning-Ferris Industries v. Kelco Disposal, Inc.*, 492 U.S. 257, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989), where this Court declined to determine the due process issue "[b]ecause petitioners failed to raise their due process argument before either the District Court or the

Court of Appeals, and made no mention of it in their Petition for Certiorari in [the Supreme Court]" (492 U.S. at 277), petitioner in the instant cases raised the due process argument under the Fifth and Fourteenth Amendments to the United States Constitution in a post-trial reply brief to the district court, in its brief on appeal to the Court of Appeals,[1] and also in its Petition for Writ of Certiorari in this Court in light of the *Haslip* case.

The questions involved concern issues of fundamental constitutional rights. The Court of Appeals' error in the treatment of the due process issue with respect to the punitive damages awards is evident. No further development of the record is needed and petitioner submits that the error should be corrected by this Court.

Respectfully submitted,

JAMES WRIGHT CRABTREE
7621 Little Avenue, Suite 412
Post Office Box 2586
Charlotte, North Carolina 28226
(704) 541-9988
Counsel of Record

CHARLES EDWARD BAKER
1730 Main St.,
Post Office Box 8057
Columbia, South Carolina 29202
(803) 799-9091
Counsel for Petitioner

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[1] Respondents' assertion that there was an "election" by petitioner "to forego argument on the point in the Fourth Circuit" (Respondents' Brief in Opposition, p. 4) is without justification. Time constraints do not permit all issues on appeal to be developed in oral argument. The due process argument was fully briefed in the Brief of Appellants.